

August 23, 2023

LEGAL ALERT

Law No. 21,592 on whistleblower protection statute is published

On August 21st, 2023, Law No. 21,592 was published in the Official Gazette, establishing a protection statute in favor of the person who complains – or reports – facts constituting disciplinary infractions or administrative misdemeanors ("Law No. 21,592").

This law governs the following entities:

- Bodies of the State Administration that are subject to the control of the Office of the General Comptroller of the Republic: Ministries; Regional Presidential Offices ("delegaciones presidenciales regionales"), and Provincial Presidential Offices ("delegaciones presidenciales provinciales"); Regional Governments; The General Comptrollership of the Republic; The Central Bank; Armed Forces and Public Security Forces; Municipalities; State-owned public companies, and; Public bodies and services created for the fulfillment of the administrative function.
- Private corporations and private foundations incorporated by Regional Governments or in which they participate;
- Private corporations and private foundations incorporated by Municipalities or in which they participate;
- State-owned or private companies, corporations or institutions in which the State or its companies, corporations or centralized or decentralized institutions have a capital participation of equal or more than 50% of the capital share, or, under the same conditions, representation or participation, and;
- that receive fiscal funds by permanent laws, as a subsidy or contribution from the State for a specific and determined purpose, in order to control the investment of such funds.

In particular, Law N° 21,592:

- Creates, within the General Comptrollership of the Republic, a Whistleblower

Channel entrusted with receiving and processing complaints about facts that may constitute disciplinary infractions or administrative misdemeanors, including, among others, corruption facts, or that affect or may affect public goods or resources.

The Ministry of the General Secretariat of the Presidency shall issue the Regulations to regulate the technical, operational and any other aspects necessary for the proper implementation and operation of the Whistleblower Channel, which shall have high security standards to prevent leaks.

- Enshrines the right of the whistleblower to obtain protection measures, which guarantees his/her personal integrity or of his/her goods, as well as the protection of his/her living and working conditions. The whistleblower may request that his/her identity may remain confidential and reserved. Being this an exception to the constitutional principle of publicity, these guarantees were approved by a qualified quorum law.

The protective measures will be maintained while the risk of retaliation for the complainant persists, even after termination of the proceedings initiated by the complained facts.

- Establishes a claim procedure in cases of retaliatory administrative actions or acts. In such a case, the General Comptrollership shall order to the respective body, if appropriate, the annulment of the unlawful acts and, if necessary, the initiation of the respective disciplinary proceedings.
- Establishes the duty of State Administration officials to complain to the competent administrative or judicial bodies any facts that come to their attention in the performance of their functions that may constitute a crime or that may constitute administrative or disciplinary infractions.
- Introduces the mitigating circumstance of "effective cooperation" in disciplinary proceedings initiated as a result of a complaint filed through the Whistleblower Channel. For such purposes, it is understood that effective cooperation is the one that leads to the clarification of the facts reported or allows the identification of those responsible or serves to prevent or avoid the perpetration of further incidents.
- Amends a series of legal bodies, including the Criminal Code and the Criminal Procedure Code. With respect to the Criminal Code, the once controversial offense of slanderous accusation is modified, replacing it with a broader one that facilitates its practical application. Meanwhile, the Criminal Procedure Code now empowers the complainant to keep his identity confidential and establishes the possibility for the Public Prosecutor's Office to order protective measures in his favor.

Regarding the entry into force of Law No. 21,592, please consider that:

- The Regulations of Law No. 21,592 shall be issued within 6 months of the publication of said law, i.e. before February 21st, 2024.
- The provisions of Law No. 21.592 will enter into force 30 days after the publication of The Regulations in the Official Gazette, except for the following:
 - Amendments to other laws will enter into force upon publication of Law No. 21,592, and;
 - Amendments to the Criminal Procedure Code will enter into force on November 21st, 2023.

To access the full text of the Law No. 21,592, please visit the following link.

Authors: Guillermo Acuña; José Ignacio Millanir; Matías Gatica